

REMARKS

Claims 13-14, 17-21, 23 and 24 stand rejected under 35 U.S.C. 102(b) as being anticipated by US patent application publication No. 2003/0108154 (hereinafter Schmitt). Claims 15-16 and 22 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Schmitt in view of US patent No. 6,539,103 (hereinafter Panin). Applicant respectfully requests reconsideration of the rejections, and further requests allowance of the pending claims in view of the foregoing amendments and the following remarks.

Claims 1-12 were previously canceled. Thus, claims 13-24 are presently pending.

The Office Communication states that the rejection under Schmitt is a 102(b) rejection. However, based on dates alone, it does not appear that Schmitt qualifies as 102(b) reference against the present application. It would appear that based on the publication date of Schmitt and the priority date of the present application, Schmitt may qualify as a 102(e) reference against the present application, and this response is predicated on that assumption.

MPEP §2131 provides that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. The identical invention must be shown in as complete detail as contained in the claim. The elements must be arranged as required by the claim.

Claim 13 is directed to a method for image refining of digital x-ray images. As amended, claim 13 in part recites modifying the current parameter set without a user directly selecting the standard parameter set. The modifying is performed in response to the user selecting an associated model image. The selecting of the associated model image results in the modifying of the current parameter set. Basis for the foregoing amendment may be found at least in the last five lines of paragraph 9, paragraph 10, and the last seven lines of paragraph 39 of the US patent application of the present invention. Applicant further notes that M.P.E.P. 2173.05(i) states that the current view of the courts is that there is nothing inherently ambiguous or uncertain about a negative limitation.

Schmitt requires the user to directly set predefined equipment parameters through manipulation of button settings. For example, as described paragraph 40 of Schmitt, a number of buttons for setting respective parameters (e.g., a filter function, a diaphragm effect, a radiation quantity, etc.,) need to be manipulated by the user. This requirement of Schmitt is directly opposite to the claimed invention that avoids the user from having to directly select the standard

parameter set. Anticipation under 35 U.S.C. §102 requires that “The identical invention must be shown in as complete detail as contained in the ...claim.” (Citations omitted) Consequently, Schmitt is not an appropriate reference for sustaining a rejection of claim 13 (and claims depending there from) under the §102 statutory requirements and this basis of rejections should be withdrawn.

Claim 20 is directed to an image refining unit adapted to modify an image data from an x-ray apparatus. As amended, claim 20 in part recites a module configured to modify a current parameter set based on a parameter set indirectly selected by a user from a plurality of standard parameter sets. The modification occurs in response to the user selecting a model image associated to the parameter set. This allows circumventing a direct selecting by the user from the plurality of standard parameter sets. In view of the discussion above and the amendments made to claim 20, Schmitt also is not an appropriate reference for sustaining a rejection of claim 20 (and claims depending there from) under the §102 statutory requirements and this basis of rejections should be similarly withdrawn.

Claim 23 is directed to an x-ray apparatus having an x-ray source, and a control and evaluation system. As amended, claim 20 in part recites a module configured to generate a current parameter set without a user directly selecting one or more of the plurality of standard parameter sets. The current parameter set is generated from one or more of the plurality of standard parameter sets in response to the user selecting the model image associated to the respective parameter set. In view of the discussion above and the amendments made to claim 23, Schmitt fails to constitute an appropriate reference for sustaining a 102 rejection of claim 23 (and claims depending there from) and this basis of rejections should also be withdrawn.

With regard to the rejections of claims 15-16 and 22 under 35 U.S.C. §103(a), Schmitt is used as one of the references applied to reject claims. Schmitt is used as prior art through 35 U.S.C. §102(e) to reject claims under §103(a). However, Schmitt should be excluded under the common ownership/assignee exception provided by 35 U.S.C. §103(c). More particularly, the present application and Schmitt were at the time the invention was made, and currently still are, wholly owned by the same organization, Siemens Aktiengesellschaft as evidenced by the recorded assignments to Siemens Aktiengesellschaft. Consequently, Schmitt is not believed to be a valid reference under the statute. Therefore, this basis of rejection should be withdrawn.

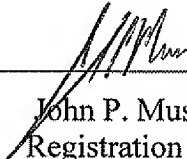
Conclusion

It is respectfully submitted that each of the claims pending in this application recites patentable subject matter and it is further submitted that such claims comply with all statutory requirements and thus each of such claims should be allowed.

The commissioner is hereby authorized to charge any appropriate fees due in connection with this paper, including the fees specified in 37 C.F.R. §§ 1.16 (c), 1.17(a)(1) and 1.20(d), or credit any overpayments to Deposit Account No. 19-2179.

Respectfully submitted,

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